IN THE MATTER OF ARBITRATION BETWEEN	}	DECISION AND AWARD
INDEPENDENT SCHOOL DISTRICT 2899	}	OF
PLAINVIEW-ELGIN-MILLVILLE	}	ARBITRATOR
(THE DISTRICT)	}	
and	}	
EDUCATION MINNESOTA	}	BMS CASE: 07-PA-0169
PLAINVIEW-ELGIN-MILLVILLE	}	
(THE UNION)	}	

ARBITRATOR:	Eugene C. Jensen
DATE AND LOCATION OF HEARING:	November 21, 2006 District Headquarters 500 West Broadway Plainview, Minnesota 55964
DATE OF FINAL SUBMISSIONS:	December 22, 2006
DATE OF AWARD:	January 19, 2007

ADVOCATES

For the District:

Gloria B. Olsen
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Kennedy & Graven
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Minneapolis, Minnesota 55402

For the Union:

William F. Garber
Attorney at Law
Education Minnesota
41 Sherburne Avenue
Saint Paul, Minnesota 55103

WITNESSES

For the District:

Eric Bartleson, Superintendent
Plainview-Elgin-Millville
I.S.D. 2899

Gloria B. Olsen, Attorney
District Advocate

For the Union:

Jeffrey Hyma, Field Staffer
Education Minnesota

Jennifer Peter, Teacher
Plainview-Elgin-Millville
I.S.D. 2899

Bonnie Van Putten, Teacher
Plainview-Elgin-Millville
I.S.D. 2899

ISSUE

The Union offered the following issue statement:

> Whether the school district violated the terms of the collective bargaining agreement when it refused to allow married teacher couples, both of whom were employed by the school district, to receive two family contributions toward their health insurance?

The District offered the following issue statement:

> Whether the Plainview-Elgin-Millvile (PEM) School District violated Article XII, Sec. 1, Subd. 2 of the Teachers' 2006 – 2007 collective bargaining agreement by making one, rather than two, SD [School District] family contributions toward family group insurance coverage for PEM teachers married to each other?

ARBITRATOR'S NOTE: Although both issue statements capture the essence of the matter at bar, I will use the District's issue statement for purposes of this arbitration.

JURISDICTION

The parties agreed in advance "that there are no procedural issues to be determined." Therefore, pursuant to the rules of the Minnesota Bureau of Mediation Services and the Labor Agreement between the parties, this matter is properly before the Arbitrator.

PERTINENT CONTRACT LANGUAGE

ARBITRATOR'S NOTE: the Plainview and the Elgin-Millville collective bargaining agreements (CBAs) both contain the same group insurance language in their 2006 – 2007 labor agreements:

ARTICLE XII – GROUP INSURANCE

Section 1. Health and Hospitalization Insurance:

> Subd. 1. Single Coverage: The school board shall contribute toward the premium payment for individual coverage for the 2006 – 2007 school year, a sum up to $3680, for each teacher employed by the school district who is covered by the provisions of this contract and who is enrolled in the school district group health and hospitalization plan.
>
> Subd. 2. Family Coverage: The school board shall contribute toward the premium payment for family coverage for the 2006 – 2007 school year a sum up to $7475 for each teacher employed by the school district who is covered by the provisions of this contract and who is enrolled in family coverage. To qualify for family coverage an employee must have legal dependents consisting of a spouse or child or both.

ARBITRATOR'S NOTE: the Plainview 2005-2006 CBA contained the above-referenced group insurance language. The Elgin-Millville 2005-2006 CBA, however, contained the following language:

Article XII. Group Insurance

Section 2. Insurance:

> Subd. 1. Coverage: The Board of Education shall contribute the applicable sum as specified in Schedule D during 2005-2006 . . . toward the premium for coverage for all teachers employed by the School District who qualify (REFER TO ARTICLE III, SECTION 7, ELIGIBILITY). Any additional cost of the premium shall be borne by the teacher and paid by payroll deduction.

ARBITRATOR'S NOTE: The following grievance language is the same in both 2006-2007 CBAs:

ARTICLE XVII – GRIEVANCE PROCEDURE

Section 8. Arbitration Procedures: In the event that the teacher and the Exclusive Representative and the school board are unable to resolve any grievance, the grievance may be submitted to arbitration as defined herein: . . .

JOINT EXHIBITS

1. July 1, 2005, through June 30, 2006, Master Agreement between Independent School District No. 810 and the Plainview Education Association. (JE#1)

2. July 1, 2005, through June 30, 2006, Agreement between Independent School District No. 806 and the Elgin-Millville Education Association. (JE#2)

3. July 1, 2006, through June 30, 2007, Agreement between Independent School District No. 806 and the Elgin-Millville Education Association. (JE#3)

4. July 1, 2006, through June 30, 2007, Master Agreement between Independent School District No. 810 and the Plainview Education Association. (JE#4)

5. November 17, 2006, e-mail from Jeffery Hyma to William Garber, regarding Family Health Insurance (with additional e-mails attached). (JE#5)

UNION'S EXHIBIT

1. March 10, 2006, e-mail from Eric Bartleson, to Paul Chick and Bonnie VanPutten, with a copy to Jeffrey Hyma. (UE#1)

DISTRICT'S EXHIBITS

1. Salary schedules for both "Plainview" and "Elgin" teachers. (DE#1)

2. 2005 – 2007 Report #500, Minn. School Boards Association Teacher Settlement Summarization Data for "Elgin." (DE#2)

3. 2005 – 2007 Report #500 for “Plainview.” (DE#3)

4. 2005 – 2007 Report #500 for “Plainview/Elgin.” (DE#4)

5. November 21, 2006, letter from Ken Zarling, Insurance Agent, to Charlene Balcome. (DE#5)

6. Several previous Plainview labor agreements. (DE#6)

7. February 21, 2006, email from Jen Peter, to Eric Bartleson. (DE#7)

8. Bureau of Mediation Services (BMS) record showing that a Plainview grievance filed in 1985 was settled prior to arbitration. (DE#8)

BACKGROUND

The Plainview and Elgin-Millville School Districts were separate entities prior to their merger in 2006. Each school district negotiated CBA’s with Education Minnesota (EM) and its predecessor, the Minnesota Education Association (MEA).

The two Districts consolidated in July of 2006, and new CBAs needed to be negotiated by January 17, 2006. The two new 2006-2007 CBAs contained identical language, except in their retirement provisions. The Plainview group insurance language (see above) was adopted for both new CBAs.

As noted above, the group insurance articles were not the same prior to the merger, and, in addition, the pre-merger articles were interpreted differently. In the previous Plainview CBAs married teacher couples received one family contribution toward the cost of their family insurance. In the previous Elgin-Millville CBAs married teacher couples could receive two family contributions toward their family insurance. The Elgin-Millville double contribution did not exceed the actual cost of the family coverage: excess money was retained by the District.

The negotiations for the 2006-2007 CBAs involved joint negotiating committees from the previous districts and unions. The parties agreed to use the original Plainview group insurance language in both 2006-2007 CBAs. Despite the change in language in the Elgin-Millville CBA, no discussion occurred at the bargaining table about the possible consequences of the change.

It was only after the contract was approved that a previous Elgin-Millville teacher raised the issue of married couples and family contributions with Superintendent, Bartleson. (DE#7) The Superintendent decided that the Plainview language and

its interpretation ruled: married teacher couples would receive one family contribution. That decision gave rise to the grievance that is at issue in this arbitration.

THE UNION'S WITNESSES

Jeffrey Hyma, Education Minnesota Field Staff, testified to the following:

- He represented the Elgin-Millville Teachers Association prior to the merger, and another Education Minnesota Field Staff represented Plainview.

- He was assigned to be the Education Minnesota staff person for the merged school district; the previous Plainview staff person was reassigned to the St. Paul office.

- He was the chief negotiator for the 2006-2007 agreements.

- The "married issue" was never brought to his attention, nor was it addressed in negotiations.

- He liked the Plainview language because he felt it was more clear; he did not believe that he changed the interpretation of the article when he proposed the Plainview language in the new CBAs.

Jennifer Peter, Kindergarten Teacher, testified to the following:

- She worked for the Elgin-Millville District prior to the merger, and she now works for the combined District.

- She married another teacher in the Elgin-Millville District four years before the merger, and she and her husband both received a family coverage contribution. The contribution paid for their family coverage, and any extra money was retained by the District.

- She and her husband currently receive one contribution toward their family coverage.

Bonnie Van Putten, High School Teacher, testified to the following:

- Taught in the Elgin-Millville District for thirteen years prior to the merger.

- If a teacher in the Elgin-Millville District, prior to the merger, did not take the family health insurance contribution, they were allowed to apply the money toward family dental coverage and other insurances.

THE DISTRICT'S WITNESSES

Eric Bartleson, Superintendent, testified to the following:

- He was the Plainview District Superintendent at the time of the merger, and he was later appointed as the Interim Superintendent for the newly merged Plainview-Elgin-Millville School District.

- The actual consolidation of the districts took place in July of 2006, however, to avoid financial penalties, new labor CBAs needed to be negotiated prior to the merger (January 17, 2006).

- He brought the two district bargaining units together to negotiate; he felt it was better to have consistent CBAs for the 2006-2007 school year.

- The Plainview CBA had higher wage schedules than the Elgin-Millville CBA, and the insurance contributions in Elgin-Millville were higher than they were in Plainview.

- The issue of married teacher couples was never brought up in bargaining.

- He was aware of Plainview's group insurance contributions; he was not aware of the practices in the Elgin-Millville District.

- He introduced District Exhibits 1 – 4: documents that provided salary information for the previous districts and for the new consolidated District.

- He became aware of the two dissimilar interpretations of the group insurance language after the negotiations had been completed.

- He believes the District's insurance plan does not allow for two family contributions, nor does it allow for one family and one single contribution. A letter from the District's insurance agent was introduced to support his belief (DE#5).

Gloria B. Olsen, Attorney/District Advocate/Witness, testified to the following:

- She introduced a Bureau of Mediation Services (BMS) "Grievance Arbitration" document from August of 1985 (DE#8). The document indicated that there was a grievance, settled prior to arbitration, between the Plainview Education Association and the Plainview School District. She speculated, based upon a conversation she had with a previous Plainview superintendent, that the issue in that grievance was similar to the issue in this arbitration.

THE UNION'S ARGUMENT

The Union, in its post-hearing brief (UB) argues that the language of the Agreement is plain and unambiguous. It suggests that there are four tests in the language to determine eligibility for a family contribution:

1. The teacher must be employed by the school district,

2. The teacher must be covered by the provisions of the CBA,

3. The teacher must be enrolled in family coverage, and

4. The teacher must have dependents. (UB p. 6)

Tests 1, 2 and 4 are straight-forward, and married teaching couples, by definition meet those tests. It is in test 3 that the Union's argument is most relevant.

> There are only three coverage options. Either the employed teacher is enrolled in the "school district group health and hospitalization plan", i.e. single coverage . . . or is enrolled in family group health coverage . . . or is not enrolled in any school-related health coverage. . . .
>
> Grievants argue that all of them opted to enroll in family coverage as is their right. That is the very basis of the grievance. (UB p. 7)

The Union agrees with the District's claim that married couples can not be issued two family policies. The Union requests two contributions, not two policies.

> There is no logical, legal or contractual reason why the district would not be required to treat every similarly-situated employee the same. Each employed teacher has a right to a district contribution to health insurance. If the teacher employee is married, that person has a right to a family contribution. The district has not explained how an employee loses that right simply because they are married to another teacher employee. (UB p. 10)

The Union also proffered the following: "No past practice argument is available under the facts of the instant case."

> Because neither party to either of the former CBAs (Joint Exhibits 1 and 2) currently exists, the former practices under those CBAs also no longer exist. The current CBAs (Joint Exhibits 3 and 4) were negotiated by the consolidated district with the consolidated union. Even if one former CBA had been entirely adopted by the new parties, the resultant CBA would still be a new CBA negotiated by

> different parties and, therefore, by definition could not have any past practice. (UB pp. 12-13)

In addition, the Union argues that "the negotiation history of the parties is also not available to assist the arbitrator."

> Witnesses form both sides made it clear that in the negotiation of the current language . . . there was no discussion of whether married teacher couples employed by the consolidated district would receive one or two family insurance contributions. (UB p. 17)

Finally, the Union argues that the "[p]resence of two 2006-2007 CBAs has no bearing on the instant issue[:]. . . . the separate CBAs with identical group family health insurance language would not authorize the argument that separate results could occur for different married teacher couples depending upon their former district." (UB pp. 17-18)

THE DISTRICT'S ARGUMENT

The District made four separate arguments in its post-hearing brief (DB):

1. Subdivision 2 is clear and unambiguous on its face.

> The clear and unambiguous language of Subdivision 2 includes four separate requirements for a teacher to receive the School District family contribution of $7,475 towards family insurance coverage premiums. First, the teacher must be "employed by the School District." Second, the teacher must be "covered by the provisions of this contract." Third, the teacher must have "legal dependents consisting of a spouse or child or both." Fourth, the teacher must be "enrolled in family coverage." PEM teachers married to each other comply with the first, second, and third requirements. However, they do not comply with the fourth requirement of "enrolled in family coverage" because it is impossible for PEM teachers married to each other to both enroll in family coverage. (DB p. 4)

They offered a November 21, 2006, letter from the District's insurance agent, Ken Zarling: to further support this argument. (DE#5)

> Please be advised that BCBS via Wayne Woxland has confirmed that if there is a couple working at PEM Schools, they are not allowed to each have family coverage nor are they allowed to have one with family and the other with single.

A couples only option would be to either have family coverage together or each have single coverage.

2. The long-standing past practice and interpretation of Subdivision 2 supports the School District's position.

   If there is any ambiguity in the Subdivision 2 language covering the 2006-07 period (and the School District maintains there is no ambiguity), the long-standing past practice under Plainview's prior Master Agreements is relevant. Since all PEM teachers now are covered by the same Subdivision 2 language from the prior Plainview Master Agreement, it is only logical and reasonable that the former Elgin-Millville teachers, as well as the former Plainview teachers, are subject to the Plainview past practice under Subdivision 2. (DB p.7)

3. The negotiations history of the PEM Master Agreement supports the School District's position.

   In situations where the merger or consolidation is due to financial limitations, as it was in the PEM case, it is obvious that the merged collective bargaining agreement cannot include a consolidated collective bargaining agreement that contains the best components of each of the prior collective bargaining agreements. . . .

   The School District negotiators were sympathetic to the Union's salary schedule proposal and wanted to have all PEM teachers with the same years of experience and same education level making the same salary. . . .

   The Union also proposed that the prior Elgin-Millville Master Agreement's health insurance benefits be included in the second year of the new PEM 2005-07 Master Agreement because they were better than the prior Plainview Master Agreement. The School District did not agree to this proposal – doing so would have meant even a greater proportion of the School District's limited financial resources going to the former Elgin-Millville teachers. (DB pp. 7-9)

4. Fairness and equity require that the Plainview School District's past practice under Subdivision 2 be applied to both Plainview and Elgin-Millville teachers.

   Arbitrators avoid interpreting ambiguous contract language to result in unfairness and inequit[y]. If Elgin-Millville teachers received the benefit of the higher Plainview salary schedule and the better Elgin-

Millville insurance during the 2006-07 period, inequity results in relation to the former Plainview teachers. (DB p. 11)

DISCUSSION AND AWARD

I believe that the following points are unchallenged in this arbitration:

1. The pre-merger Elgin-Millville CBAs allowed for two family coverage contributions.

2. The pre-merger Plainview CBAs allowed for one family coverage contribution.

3. Neither party discussed the issue at bar in this arbitration during their last round of collective bargaining.

4. The Plainview language regarding family coverage and contributions was adopted in the new CBAs (2006-2007).

5. Both parties to this arbitration argue that the aforementioned insurance language is clear and unambiguous.

6. The Union sees in its interpretation that two contributions are allowed.

7. The District sees in its interpretation that one contribution is allowed.

8. The Union believes that past practice is irrelevant.

9. The District believes that past practice is relevant.

10. The Union believes that the negotiation history is not available to the Arbitrator, since there were no discussions regarding the issue in this arbitration.

11. The District believes that the negotiation history points out the *give and take* of the bargain: higher salaries as a trade-off for lower insurance benefits.

It is interesting that both parties claim an unambiguous interpretation of the language, and yet their unambiguous interpretations are diametrically opposed. While I find both interpretations to be semantically interesting, they lack evidence that the parties knowingly agreed to either interpretation.

It is quite clear that there was no “meeting of the minds” when the language was negotiated; and when the issue later surfaced, the parties chose predictable

interpretations: the District, for economic reasons, chose the single contribution interpretation; the Union, for the benefit of its members, chose the double contribution interpretation.

Neither interpretation is fair in the mind of the Arbitrator. To grant the District's position, I would deny employees who have received the double contribution a significant benefit. And, to grant the Union's position, I would adversely burden the District with additional insurance contributions that previously did not exist.

I agree with the fact that the current CBAs are actually the same, save the retirement language; I disagree, however, with the premise that both agreements require a single interpretation. I also disagree with the Union's position that the past practices are null and void. In fact, I find both past practices to be binding.

Many labor agreements contain provisions that include or exclude represented employees from various provisions, and these provisions are often the result of merging employees from various bargaining units and/or classifications. They may take the form of contractual addendums or memorandums of understanding, and they may cover many subjects: wages, hours of work, insurance benefits, retirement, training reimbursement, etc. And, although it is commonly held that it is beneficial to keep such provisions to a minimum, and/or have them sunset as soon as possible, they do exist.

I see this issue as similar to the retirement issue that could not be resolved during the parties' limited window of bargaining. The retirement issue was complex and needed more time; the instant issue was unknown and not addressed. In both instances the bargain was incomplete.

Both insurance practices are valid and they shall continue until the parties, if so inclined, amend the language.

AWARD

Teachers from the previous Elgin-Millville School District shall receive insurance benefits as per the Elgin-Millville practice prior to the merger. The actual dollar amounts shall be those listed in the 2006-2007 CBAs. Teachers from the previous Plainview School District shall receive insurance benefits as per the Plainview practice prior to the merger. This award is retro-active to July 1, 2006. Any unresolved differences regarding interpretation or application of this award will be settled by the undersigned upon written request.

Respectfully submitted this 19th day of January, 2007.

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Eugene C. Jensen, Neutral Arbitrator